

KRUEGER ASSOCIATES, INC.,
individually and Trading as
National Fulfillment Services,

Plaintiff,
v.

ADT SECURITY SYSTEMS,
MID-SOUTH, INC., and
ADT SECURITY SYSTEMS, INC.,

Defendants,
v.

EUGENE KRUEGER and SAMUEL
MENDICINO, individually, and
d/b/a HOLMES CORPORATE CENTER
and HOLMES INDUSTRIAL OFFICE
CENTER,

Third-Party Defendants.

CIVIL ACTION NO. 93-1040

Before this Court is the Statement of Fees and Costs filed by Defendants ADT Security Systems, Mid South, Inc. and ADT Security Systems, Inc. ("ADT Defendants" or "ADT"). In the above-captioned case, Plaintiff Krueger Associates, Inc. ("Krueger") filed suit against ADT Defendants after a fire occurred on February 4, 1992, destroying the offices leased by Krueger. Plaintiff alleged that the fire protection system installed and serviced by ADT Defendants failed to promptly detect the fire and notify the proper authorities in a timely

fashion.¹

On October 7, 1993, ADT Defendants filed a Third-Party Complaint against the owners of the office facility, Eugene Krueger and Samuel Mendicino, doing business as Holmes Corporate Center and Holmes Industrial Office Center ("Holmes Defendants" or "Holmes"), claiming breach of contract (Count I), seeking a defense and indemnification for the suit filed by Plaintiff (Count II), and alleging tortious interference with contractual relations (Count III), fraud and misrepresentation (Count IV).²

On December 20, 1994, summary judgment was granted in favor of ADT on Counts I and II of the Third-Party Complaint; thus, Holmes Defendants were directed to defend and indemnify ADT Defendants.³ Krueger Assocs. v. ADT Security Sys., No. CIV. A.

¹ Plaintiff's Complaint was filed on February 26, 1993, and alleged strict liability (Count I), negligence (Count II), breach of implied warranties (Count III), strict liability - ultrahazardous activities (Count IV), fraud (Count V), and negligent misrepresentation (Count VI). Defendants answered the Complaint and filed a counterclaim alleging tortious interference (Count I) and fraud (Count II).

² Third-Party Defendants answered the Third-Party Complaint and filed a crossclaim against Plaintiff seeking indemnification pursuant to the lease between them. Plaintiff answered and asserted a crossclaim against Third-Party Defendants likewise seeking indemnification pursuant to the lease.

³ The fact that Eugene Krueger was a majority shareholder and CEO of Plaintiff as well as a partner of Holmes created a conflict which made it necessary for ADT Defendants to select their own counsel, as Holmes could not properly be permitted to participate in or control ADT's defense. Krueger, 1994 WL 709380 at *5.

93-1040, 1994 WL 709380, *5 (E.D. Pa. Dec. 20, 1994). Also, on December 20, 1994, Holmes Defendants' Motion for Summary judgment against Plaintiff was denied. Id. at *5-6. Then, on October 2, 1996, summary judgment was granted in favor of ADT Defendants on all of Plaintiff's remaining claims. Krueger Assocs. v. ADT Security Sys., No. CIV. A. 93-1040, 1996 WL 560335 (E.D. Pa. Oct. 2, 1996).

Subsequently, Plaintiff and Holmes Defendants appealed those decisions, but the Third Circuit Court of Appeals dismissed those appeals for lack of jurisdiction. The appellate court noted that one of the issues that precluded appeal was the quantification of the amount of attorney's fees recoverable by ADT pursuant to its contract with Holmes Corporate Center. Krueger Assocs. v. American District Telegraph Co., No. 96-1950/1977, at pp. 4-5 (3d Cir. June 19, 1997).

On July 8, 1998, this Court granted Plaintiff's Motion for Summary Judgment with respect to Holmes Defendants' crossclaim for indemnification pursuant to the lease agreement, holding that the lease did not require Plaintiff to indemnify Holmes Defendants. Krueger Assocs. v. ADT Security Sys., 11 F. Supp.2d 634, 636 (E.D. Pa. 1998). In ruling for Plaintiff, this Court found that the lease required indemnification only for liability of Holmes Defendants that arises out of the ownership of the rental property, and because Holmes' liability to ADT

stemmed from a breach of the ADT-Holmes contract, the lease did not require Plaintiff to indemnify Holmes in this situation. Id.

Also on July 8, 1998, this Court found that Krueger's crossclaims, which incorporated Plaintiff's Complaint by reference, were improper and dismissed these claims because Krueger provided no basis for liability from Holmes Defendants to Krueger. Krueger Assocs. v ADT Security Sys., 11 F. Supp.2d 637, 638 (E.D. Pa. 1998). In addition, Krueger's claim for indemnification pursuant to the lease agreement was dismissed since it was found that nothing in the lease required Holmes Defendants to indemnify Plaintiff. Id.

Now, ADT Defendants have filed a Statement of Fees and Costs, requesting that this Court enter an award in favor of ADT for all fees and costs incurred defending against Plaintiff's claims in the amount of \$403,440.83, minus whatever amount the Court, in its discretion, believes is attributable to prosecuting the third-party claim.⁴

⁴ The parties agreed that the cost incurred by ADT for the prosecution of the indemnity claim against Holmes Corporate Center should not be allowed as part of the fee petition since the agreement did not provide for recovery of legal fees to enforce the agreement. However, with the exception of a limited number of obvious entries in the time schedules submitted by ADT's counsel, there was nothing to aid this Court in determining what portion of ADT's Statement of Fees and Costs could specifically be attributed to work performed on the prosecution of the indemnity claim. As a result, this Court instructed counsel for ADT to supplement the record with an itemization of indemnity-related fees. ADT's submission listed entries totalling \$36,344.30. Counsel for Holmes Corporate Center filed

STANDARD OF REVIEW

The basis for the award of fees and expenses in this case is a provision in the agreement between ADT and Holmes.

While this Court is guided generally in the approach to the issue of attorneys' fees established by the Third Circuit in Lindy Brothers Builders, Inc. v. American Radiator & Standard Sanitary Corp. 540 F.2d 102 (3d Cir. 1976), the Lindy cases are only indirectly applicable since the award of attorneys' fees and expenses in this case is based upon the terms of the contracts between the parties. State law, in this case, Pennsylvania law, governs the construction of these contracts.

Contracts providing for the payment of attorneys' fees and litigation expenses in a reasonable amount are enforceable under Pennsylvania law. . . .

Under Pennsylvania law, what constitutes a reasonable amount of fees and expenses is subject to the court's equitable control. The relevant factors examined in determining the reasonableness of fees and expenses under Pennsylvania law are: the amount and character of the services rendered; the labor, time and trouble involved; the character and importance of the litigation; the amount of money or value of property affected; the professional skill and experience called for; the standing of the attorney in his profession; and the pecuniary benefit derived from the success. These factors are quite similar to those considered under the Lindy approach.

Nationwide Energy Corp. v. Kleiser, Civ. A. No. 84-3517, 1987 WL

a supplemental response that revealed additional time entries and charges relating to the indemnity claim of \$6,453.50, putting ADT's total indemnity-related fees and costs at \$42,797.80, which is comparable to Holmes' indemnification claim defense costs of \$43,514.55. Accordingly, this Court will deduct \$42,797.80 from the total fees and costs submitted by ADT.

10655, *2-3 (E.D. Pa. May 7, 1987) (citations omitted).

In the instant action, Holmes has challenged the reasonableness of the fees and costs of ADT's Counsel. In response, ADT continually argues that because this Court has already decided that Holmes is obligated to pay ADT's legal fees and costs pursuant to the contract between the parties, and ADT has already paid for said fees and costs, the amount requested should be automatically reimbursed in accordance with said contract. In doing so, ADT has attempted to minimize the effect of any reasonableness factor on this Court's review of the Statement of Fees and Costs at issue. However, "the trial court may still inquire into the reasonableness of the fees claimed under an indemnity agreement if those fees are challenged." Ideal Elec. Sec. Co. v. Int'l Fidelity Ins. Co., 129 F.3d 143, 150 (D.C. Cir. 1997) (applying D.C. law); Coleco Indus. v. Berman, 423 F. Supp. 275, 318-19 (E.D. Pa. 1976) ("While we do not believe we have as high a duty, in finding counsel fees under a contract, to scrutinize a law firm's handling of a litigation as we do when awarding counsel fees out of a common fund or under statute, . . . our duty under New Jersey law goes beyond checking the record for statistical evidence of the number of hours a firm worked on a case, its hourly rate, and the bill it sent its client."), aff'd in part, remanded in part, 567 F.2d 569 (3d Cir. 1977), cert. denied, 439 U.S. 830 (1978); cf. Griffith v. United

States, CIV. A. No. 87-1665, 1989 WL 150931, *1 (E.D. Pa. Dec. 11, 1989) ("Brock's not challenging the fees and expenses submitted by Allied, combined with the fact that Interstate Insurance Group has paid Allied's attorneys indicates that the amount of hours submitted by Allied were reasonable."). Accordingly, this Court will now review the disputed items charged by ADT's counsel in the Statement of Fees and Costs at issue.

DISCUSSION

In answering ADT Defendants' Statement of Fees and Costs, Holmes Defendants contend that ADT is requesting excessive and inappropriate charges. For example, with respect to the first bill, Holmes argues that the 60 plus hours of research charged by counsel for ADT Defendants was at least twice as long as the tasks -- reviewing the complaint, researching the law, and preparing a motion to dismiss the complaint -- should have taken.

With respect to the second bill, Holmes argues that "[m]ore than 32 hours were spent performing research and preparing a reply brief including \$630.00 for computerized research." Holmes' Answer at 2-3. According to Holmes, the time spent is excessive in light of the amount of prior research, the project, and the expectation that the lawyers should not need to extensively research the concepts involved in the matter. Id. at 3. Holmes asserts that "[i]n all, the lawyers for ADT spent in

excess of 150 hours for research alone." Id. Considering the extent of the above research, Holmes questions how counsel for ADT can properly bill in excess of \$200.00 per hour when so much training in the applicable law was needed.

In response, ADT points out that there were many legal issues that arose during the course of this litigation, and, as discovery proceeded, original issues were refined and new issues emerged. Thus, ADT submits that its continued efforts to dismiss Plaintiff's claims, including additional research, were entirely necessary, appropriate and fully compensable.

Considering the wealth of experience of ADT's attorneys, this Court agrees that the entries pointed to by Holmes are excessive. The case in question did not present novel issues of law that would require an experienced practitioner to expend an extensive amount of time researching legal issues or drafting pretrial documents.⁵ Furthermore, the time expended by ADT's counsel on the preparation of discovery requests seems extraordinary in light of their years of experience.⁶ In

⁵ Holmes notes that a ADT summary judgment motion which Holmes characterizes as "recycled," required a questionable 117 hours of revision.

⁶ Holmes submits that 5 hours should have been sufficient for the ADT legal team to prepare written discovery requests, rather than the 38 hours charged. Another 38 hours was used to respond to a motion to dismiss. In addition, 130 hours was dedicated to filing, maintenance, and updating documents, an amount of time which Holmes contends falls more in line with a class action or mass tort litigation, rather than this case.

addition, Holmes' has convincingly highlighted several questionable secretarial/administrative actions that were completed and charged for by attorneys.⁷ Based on the above, this Court will reduce the total amount of attorney's fees in ADT's submission by 10% or \$30,307.37 to compensate for the time spent on the aforementioned tasks. See Becker v. Arco Chemical Co., 15 F. Supp.2d 621, 633 (E.D. Pa. 1998) (reducing the balance of each attorney's hours by 10% to compensate for the excessive time spent on certain tasks); see also Lindy Bros., 540 F.2d at 116 ("We find it necessary also to observe that we did not and do not intend that a district court, in setting an attorneys' fee, become enmeshed in a meticulous analysis of every detailed facet of the professional representation Once the district court determines the reasonable hourly rates to be applied, for example, it need not conduct a minute evaluation of each phase or category of counsel's work.").

Next, Holmes compares its own defense costs (\$43,514.55) to the amount requested by ADT (\$403,440.83) and submits that "[u]nder no circumstances should the fee petition for the defense of ADT exceed three times the cost of defense of Holmes Corporate Center" Holmes' Answer at 5. Holmes

⁷ For example, Holmes challenges an entry dated January 6, 1994, that bills 3.2 hours for "drafting letter demand for third-party defendants' mandatory disclosure; drafting notices of deposition for Eugene Krueger and Samuel Mendicino."

adds that it could have managed the defense of ADT for considerably less cost than ADT and argues that it should not be obligated to reimburse ADT for an amount in excess of the amount it would have cost Holmes to handle ADT's defense.

However, as ADT points out, Holmes was defending only ADT's indemnification claim, not Plaintiff's claims, which were the thrust of this litigation, making how much Holmes spent on its own defense costs an improper basis for reducing ADT's Statement of Fees and Costs.⁸ And while the issue before this Court is the reasonableness of ADT's fees and costs incurred in defending against Plaintiff's claims, an assertion by Holmes' that other counsel could have defended ADT at a lower cost must be supported by affidavits in order to properly make such a factual challenge. See Bell v. United Princeton Properties, 884 F.2d 713, 720 (3d Cir. 1989).

Holmes has also submitted an audit of ADT's bill conducted by Legal Cost Control. The audit questioned the propriety of certain fees and costs in the amount of \$148,543.29, without regard for whether the time charges for the described tasks were reasonable.

⁸ ADT had far more extensive involvement in this litigation than Holmes did, which allows for the difference in costs to the parties. In this regard, ADT states that "[a]lthough counsel for Holmes 'attended' depositions, nearly all discovery in this litigation involved only ADT and the Plaintiff." ADT Reply at 4.

In response, ADT contends that such an audit is inappropriate, misleading and inaccurate. In doing so, ADT clarifies that it did not file a "fee petition," but instead submitted a "statement of fees and costs" as evidence of monies ADT paid in the defense of Plaintiff's claims, and reminds this Court of its ruling that ADT is entitled to reimbursement of those fees and costs. ADT also points out that Holmes' audit challenges only \$148,000 of ADT's \$400,000 fees and costs, thus conceding that it must reimburse ADT a minimum of approximately \$252,000. As for the \$148,000 designated as improper by Holmes, ADT responds that, in this regard, the audit inaccurately assesses the hourly rates ADT paid for legal services. And ADT contends that Holmes' audit seeks to apply a set of inappropriate "ground rules" to ADT's billing methods.

As already stated above, Holmes may challenge the reasonableness of the fees and costs submitted by ADT's counsel. Having reviewed the costs challenged by Holmes as improper, this Court finds that the following items, totalling \$17,149.83, will be disallowed, as they are considered overhead components of ADT counsel's attorney's fees: Copying & Binding of \$15,473.06, Travel Mileage of \$126.96, Parking & Tolls of \$86.45, Federal Express of \$658.55, Postage of \$254.99, Miscellaneous Expense of \$230.50, Luncheon Dinner Conference of \$118.34, Overtime - Meals of \$42.70, and Overtime - Clerical of \$158.28. See, e.g., Oce

Business Sys. v. Slawter, Civ. A. No. 88-8373, 1991 WL 137263, *3 (E.D. Pa. July 19, 1991) (disallowing reimbursement for secretarial and paralegal overtime, meals, travel and parking expenses); Policino v. City of Philadelphia, Civ. A. No. 89-4672, 1991 WL 124592, *2 (E.D. Pa. July 3, 1991) (disallowing recovery of travel, parking and postage expenses).

Next, Holmes argues that "[t]he obligation to pay for the defense of ADT did not arise because ADT was not liable to plaintiff." Holmes' Answer at 6. According to Holmes, it was necessary for ADT to be liable in order to trigger the duty of Holmes Corporate Center to defend ADT.

However, this Court has already determined that Holmes has a present duty to indemnify and hold ADT harmless for "expenses, costs and attorneys fees" that ADT has incurred and will incur throughout the duration of this litigation. See ADT's Reply at 7 (citing Krueger, 1994 WL 709380 at *5). The pertinent contract language is as follows:

IN THE EVENT ANY PERSON, NOT A PARTY TO THIS AGREEMENT, SHALL MAKE ANY CLAIM OR FILE ANY LAWSUIT AGAINST ADT FOR FAILURE OF ITS EQUIPMENT OR SERVICE IN ANY RESPECT, CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD ADT HARMLESS FROM ANY AND ALL SUCH CLAIMS AND LAWSUITS INCLUDING THE PAYMENT OF ALL DAMAGES, EXPENSES, COSTS AND ATTORNEYS FEES.

ADT is correct in that the above language clearly shows that Holmes' duty to defend ADT is not dependent on its duty to

EUGENE KRUEGER and SAMUEL	:
MENDICINO, individually, and	:
d/b/a HOLMES CORPORATE CENTER	:
and HOLMES INDUSTRIAL OFFICE	:
CENTER,	:
Third-Party Defendants.	:
_____	:

ORDER

AND NOW, this 5th day of January, 2000, upon consideration of the Statement of Fees and Costs filed by Defendants ADT Security Systems, Mid South, Inc. and ADT Security Systems, Inc. ("ADT Defendants"), and all responses thereto, it is hereby ORDERED that ADT Defendants are awarded attorney's fees and costs in the amount of \$313,185.83.

BY THE COURT:

ROBERT F. KELLY,	J.